

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2004-169-E - ORDER NO. 2004-417
OCTOBER 1, 2004

IN RE: Request of Duke Power for a Partial Waiver)	ORDER APPROVING
of Rule 103-331 as it Relates to Deposit)	WAIVER AND TARIFF
Requirements for Non-Residential Accounts.)	ON AN EXPERIMENTAL
)	BASIS

I. INTRODUCTION

This matter comes before the Public Service Commission of South Carolina (the Commission) on the request of Duke Power, a division of Duke Energy Corporation (Duke or the Company) for a partial waiver of 26 S.C. Code Regs. 103-331 as it relates to deposit requirements for nonresidential accounts. Currently Regulation 103-331(3) allows Duke to require an existing customer to post a deposit to guarantee payment of bills for service if the customer has had two consecutive 30-day arrears or more than two non-consecutive 30-day arrears in the past 24 months. Duke states that, based upon developments within its non-residential customer base, the Company believes that it needs the ability to require nonresidential customers to post a cash deposit or other form of guarantee when additional internal and external analyses of such customer's credit risks so justify. Duke further states that full compliance with the Regulation 103-331(3) introduces unusual difficulty to Duke, and Duke offers the partial waiver request is in the public interest.

By way of background, the Company states that, over the last four years, it has experienced a significant increase in the volume of accounts that must be written off as uncollectible. Many of these uncollectible accounts come from large commercial and industrial accounts, and the lack of available guarantee requirements for these established customers under Commission Regulation 103-331 has been a significant contributor to write-offs in the non-residential classes, according to Duke. The Company notes that under the current rules and approved rates schedules, an existing Duke Power customer that is paying within terms, but having extreme financial difficulty, can be indebted to Duke for two months' service without the Company having the ability to secure the account or discontinue service. By billing for service after it is used and allowing a customer to continue to use service before they are required to pay for the previous month's service, a customer can be paying "on time" but still have the potential for creating a loss equal to two month's revenue. Duke's nonresidential rate schedules approved by the Commission provide that bills are past due 15 days after the date of the bill; however, there is no incentive to encourage a customer to pay under this requirement because (1) service disconnection for a past due bill requires a 10 day notice; (2) Regulation 103-331 does not allow the account to be secured unless it is 30 days in arrears for two consecutive months or more than two non-consecutive months in the past 24 months; and (3) late payment charges do not accrue until the 25th day.

In support of its request for a partial waiver of Regulation 103-331, Duke included a summary of large South Carolina nonresidential customers who were paying Duke for electric charges within required payment terms but who were shown by external

credit rating agencies to have deteriorating financial health. All of these customers ended up filing for Chapter 11 bankruptcy protection. Duke notes that, despite the external indicators of credit problems, Regulation 103-331 would not allow Duke to rely on this external information and require these nonresidential customers to post a deposit. In contrast, Duke notes that the North Carolina Utilities Commission has a rule allowing Duke to require a customer to reestablish credit when the basis on which its original credit was established has materially changed. Under the North Carolina rule, Duke states that it is able to secure the accounts after external data revealed that the customer's credit risk has materially changed. Accordingly, Duke states its belief that the exercise of fiscal prudence requires Duke to seek this partial waiver of Regulation 103-331 in order for Duke to minimize the risk associated with those customers that pay Duke, even within 15-day terms, but ultimately file for bankruptcy protection due to their inability to pay other creditors.

II. PROPOSED CRITERIA AND EXPLANATION

Duke proposes the following information for use in analysis of creditworthiness for nonresidential customers:

1. Customer's utility payment record;
2. Key financial information and ratios that include but are not limited to the following:
 - a. Net Income;
 - b. Gross Profit Margin;
 - c. Cash Flow;

- d. Availability of Financing;
 - e. EBIT/Interest Expense; and
 - f. Total Debt/Total Capital.
3. Public debt ratings and outlook forecasts from Standard & Poor's, Moody's, Fitch, or other available credit data providers;
 4. Information from Dun & Bradstreet regarding payment trends with other creditors and suppliers; and
 5. Business profiles and industry analysis.

Duke states that this internal and external data would be used to formulate an Internal Risk Rating as specified in the Duke Energy Corporate Credit Guidelines. According to Duke, Internal Risk Ratings are used throughout the Company and range from one to eight, with eight indicating the level of highest risk. To ensure consistency among nonresidential customers, Duke would request security if the customer has an Internal Risk Rating of six or higher, which equates to a Standard & Poor's below investment grade ratings of B+, B or B-.

Acceptable forms of security would include a cash deposit, standby irrevocable letter of credit, or guarantee from a creditworthy parent company. Duke would require that the security be maintained until the customer achieves an Internal Risk Rating of five or better. At that time, a cash deposit would be refunded with interest and any Letter of Credit or required guarantee would be canceled. Customers would also be offered the alternative of prepayment in lieu of a deposit. The prepayment program would entail

customers paying for electricity as it is used on a weekly or bi-weekly basis, rather than paying on the normal billing cycle, which is approximately every thirty days.

Duke's conclusion is that if Duke is provided with the ability to request guarantee of payment from nonresidential customers as outlined above, Duke believes that other customers would be better protected from having to absorb the costs resulting from unmitigated credit events.

We have examined Duke's proposal. We recognize that the intent of Duke's request is to minimize uncollectibles and possible adverse impact on other ratepayers, which is a worthwhile Company goal. However, we have remaining concerns over the lack of specificity in some areas of the request, for example, how the named factors are applied to reach a particular Internal Risk Rating. It appears that some of the criteria employed may be subjective rather than objective in nature. But because we do recognize that a problem exists with the creditworthiness of certain non-residential customers in the area described, we believe that the request for the partial waiver should be granted and approved on a one-year experimental basis. We also believe that Duke should be required to render a report at the end of one year from its receipt of this Order on the use of this tariff provision, including any complaints regarding the use of this provision.

III. FINDINGS OF FACT

1. Based upon developments within its nonresidential customer base, Duke is of the opinion that it needs the ability to require nonresidential customers to post a cash deposit or some other form of guarantee when additional internal and external analyses of such customer's credit risks so justify.

2. Duke further believes that Commission Regulation 103-331 introduces unusual difficulty to Duke and that a partial waiver of this regulation is in the public interest.

3. It appears that Commission Regulation 103-331 would not allow Duke Power to require nonresidential customers to post a deposit or other security when the creditworthiness of that customer comes into question.

4. Duke has established proposed criteria to analyze creditworthiness of the non-residential customers as indicated *supra*.

5. Duke's request for a partial waiver of Regulation 103-331 is granted for one year on an experimental basis.

6. Duke shall institute its described program for the year period and render a report at the end of the year on the use of the provision, including any complaints regarding the use of the provision.

IV. CONCLUSIONS OF LAW

1. The requested partial waiver of Commission Regulation 103-331 is granted for one year on an experimental basis. Under the circumstances, we agree that compliance with the regulation produces unusual difficulty for Duke and that the partial waiver on a one year experimental basis is in the public interest. See Regulation 103-301(3).

2. Pursuant to S.C. Code Ann. Section 58-27-870(F)(Supp. 2003), the Commission may allow tariffs to be put into effect without notice and hearing upon order of the Commission when such tariffs are for experimental purposes. We have determined

that the tariff provision requested for approval by Duke shall be experimental. Accordingly, no notice or hearing is required for our approval of this tariff.

3. We approve Duke's proposed tariff on a one year experimental basis; however, Duke must report to the Commission on the use of this tariff provision at the end of the year, and Duke shall include in its report any difficulties or customers' complaints on the use of this tariff provision

V. ORDER OF THE COMMISSION

1. The requested partial waiver is granted on a one-year experimental basis.

2. Duke's proposed tariff is approved on a one-year experimental basis.

3. Duke shall make a report to the Commission within one year from receipt of this Order on the use of this tariff provision, and Duke shall include in its report any difficulties or customers' complaints on the use of this tariff provision.

4. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

/s/
Randy Mitchell, Chairman

ATTEST:

/s/
G. O'Neal Hamilton, Vice Chairman

(SEAL)